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8 MANHATTAN MORTGAGE CORPORATION

9
10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 JIMMY TRINH, an individual, on
13 behalf of himself and all others
14 similarly situated; ERIC STOREY,
an individual, on behalf of himself
and all others similarly situated,

15 Plaintiffs,

16 vs.

17 JPMORGAN CHASE & CO., a
18 Delaware corporation; JPMORGAN
CHASE BANK, N.A., a New York
corporation; CHASE
19 MANHATTAN MORTGAGE
CORPORATION, a New Jersey
corporation; DOES 1 THROUGH
20 10, inclusive,

21 Defendants.

CASE NO. 07-CV-01666 W (WMC)
**JOINT MOTION RE: REQUEST TO
FILE CONFIDENTIAL
SETTLEMENT AGREEMENTS
UNDER SEAL PURSUANT TO
LOCAL RULES 7.2 AND 79.2(c)**

1 **I. INTRODUCTION**

2 By this joint motion, Plaintiffs Jimmy Trinh and Eric Storey (“Plaintiff”) and
 3 Defendants JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., and Chase
 4 Manhattan Mortgage Corporation (“Defendants”) (collectively, the “parties”) seek
 5 an Order permitting the parties to file their confidential settlement agreement under
 6 seal. Under applicable federal law, the settlement agreement must be submitted to
 7 the Court for review and approval before this matter can be dismissed. The parties
 8 have met and conferred regarding the necessity of keeping the terms of the
 9 settlement agreement confidential, and stipulate that the settlement agreement
 10 should be filed under seal to protect the confidentiality of its terms. If the
 11 confidentiality of the agreement is not assured, there is a significant risk that the
 12 settlement will falter.

13 It is within the Court’s discretion to grant this request and relevant case law
 14 strongly supports such a decision. As discussed below, courts have repeatedly
 15 confirmed that the confidentiality of settlement agreements should be protected
 16 where, as here, the parties agree that confidentiality is an essential condition of the
 17 settlement. Accordingly, the parties seek an order permitting the confidential
 18 settlement agreement to be filed under seal.

19 **II. PROCEDURAL BACKGROUND**

20 On August 22, 2007, Plaintiffs filed suit against Defendants alleging that
 21 Defendants improperly classified Plaintiffs, and other allegedly similarly situated
 22 individuals, as exempt from overtime and meal and rest period requirements, failed
 23 to provide itemized wage statements, and failed to reimburse expenses. On January
 24 15, 2008, Plaintiffs moved to conditionally certify a Fair Labor Standards Act
 25 (“FLSA”) Collective Action and Facilitate Notice to Potential Class Members.
 26 [Docket Nos. 14-17.] On April 22, 2008, the Court denied Plaintiffs’ motion for
 27 conditional certification under the FLSA. [Docket No. 38.] Thereafter, Plaintiffs
 28 did not seek collective action or class certification under either the FLSA or

1 California labor law.

2 In January of 2009, the parties executed two confidential Settlement and
 3 General Release Agreements (“Confidential Settlement Agreements”). As part of
 4 the Confidential Settlement Agreements, the parties agreed to dismiss with
 5 prejudice all claims contained within Plaintiffs’ Complaint. In addition, as part of
 6 the consideration, Plaintiffs agreed to release, among other things, any and all
 7 claims that they have (or had) against Defendants for wages pursuant to the FLSA.

8 Under the FLSA, court approval is required before FLSA claims can be
 9 settled and dismissed. *See Lynn's Food Store, Inc. v. United States*, 679 F.2d 1350,
 10 1352-53 (11th Cir. 1982). Therefore, the parties must allow the Court to review
 11 and approve the settlement agreement before the case can be dismissed. If the
 12 settlement agreement is filed with the Court, however, the document will become
 13 public and its terms will no longer be confidential. In order to satisfy the
 14 requirements of the FLSA while preserving the confidentiality of the settlement
 15 agreement, the parties request that the settlement agreement be filed under seal for
 16 the Court’s review and approval and remain permanently under seal after this case
 17 has been dismissed.

18 **III. DISCUSSION**

19 The decision to seal records is left to the discretion of the District Court.
 20 *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995), (*citing Nixon v. Warner*
 21 *Communications, Inc.*, 435 U.S. 589, 599 (1978)). In determining whether the
 22 sealing of documents is proper, courts should consider “the interests advanced by
 23 the parties in light of the public interest and the duty of the courts.” *Tragesser*, 49
 24 F.3d at 1434, *citing, Nixon*, 435 U.S. at 602. The decision is “one best left to the
 25 sound discretion of the trial court, a discretion to be exercised in light of the
 26 relevant facts and circumstances of the particular case.” *Tragesser*, 49 F.3d at
 27 1434, (*citing Nixon*, 435 U.S. at 599).

28 Under this framework, it is well-established that confidential settlement

1 agreements should be sealed when necessary to promote settlement or preserve the
 2 parties' desired confidentiality. *City of Hartford v. Chase*, 942 F.2d 130, 135 (2nd
 3 Cir. 1991) ("a federal judge has the power to prevent access to settlement
 4 negotiations [by sealing settlement documents] when necessary to encourage the
 5 amicable resolution of disputes"); *In re Franklin Nat'l Bank Sec. Litigation*, 92
 6 F.R.D. 468, 471-72 (E.D.N.Y. 1981) (refusing to unseal settlement documents and
 7 noting that "secrecy of settlement terms . . . is a well-established American
 8 litigation practice"). Indeed, courts have applied this rationale in approving parties'
 9 requests to seal confidential settlement agreements that were submitted for court
 10 approval in cases under the FLSA. *Gilmore v. Nationwide Ins. Co. of Am.*, 2006
 11 U.S. Dist. LEXIS 88919 (M.D. Ala. December 8, 2006); *Viada v. Osaka Health
 12 Spa, Inc.*, 2006 U.S. Dist. LEXIS 84744 (S.D.N.Y. June 27, 2006).

13 Here, the balance of interests strongly favors the parties' request to file the
 14 confidential settlement agreement under seal. The public interest in disclosure of
 15 the terms of this settlement, if any, is minimal because this is a private settlement
 16 reached exclusively between Plaintiffs and Defendants. Further, one of the
 17 essential conditions of the proposed settlement is confidentiality. Indeed, there is a
 18 significant possibility that the settlement will not go forward if confidentiality is not
 19 ensured. Public policy strongly favors encouraging settlement by keeping
 20 settlement agreements confidential. *Hasbrouck v. BankAmerica Hous. Servs.*, 187
 21 F.R.D. 453, 458 (N.D.N.Y. 1999) ("protecting the confidentiality of the settlement
 22 agreement promotes the important public policy of encouraging settlements").

23 The parties are in agreement that the interests of both Plaintiffs and
 24 Defendants are best served by filing the settlement agreement under seal. In light
 25 of the absence of a strong public interest in favor of revealing these sensitive
 26 materials and the strong public policy in favor of encouraging settlement, the
 27 interest in keeping this information confidential and under seal is the overriding
 28 interest. For these reasons, the "balance of the equities" falls in favor of granting

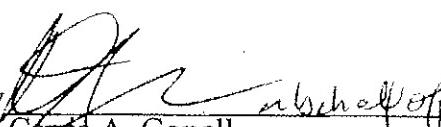
1 the parties' request to file the Confidential Settlement Agreements under seal.

2 **IV. CONCLUSION**

3 The parties respectfully request that this Court grant their Request.

4
5 Dated: January 26, 2009

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12 and CHASE MANHATTAN
13 MORTGAGE CORPORATION

14
15 Dated: January 23, 2009

16 ARIAS OZZELLO & GIGNAC LLP
17 MIKAEL STAHL 

18 By 
19 Mikael Stahle
20 ATTORNEYS FOR PLAINTIFFS
21 JIMMY TRINH AND ERIC
22 STOREY

PROOF OF SERVICE

Trinh v. JPMorgan Chase
USDC Case No. 07-cv-01666 W-WMC

I am a resident of the State of California and over the age of eighteen years and not a party to the within-entitled action; my business address is 5 Park Plaza, Suite 1750, Irvine, California 92614.

On January 26, 2009, I served the within document(s):

**JOINT MOTION RE: REQUEST TO FILE CONFIDENTIAL
SETTLEMENT AGREEMENTS UNDER SEAL PURSUANT TO
LOCAL RULE 7.2 AND 79.2(c)**

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
 - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
 - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid-**Certified Mail-Return Receipt Requested**, in the United States mail at Irvine, California addressed as set forth below.
 - by causing the document(s) listed above to be personally delivered at to the person(s) at the address(es) set forth below.
 - by transmitting via electronic mail the document(s) listed above to each of the person(s) as set forth below on January 26, 2009. My electronic notification address is 5 Park Plaza, Suite 1750, Irvine, California 92614. My e-mail address is pmartin@morganlewis.com.

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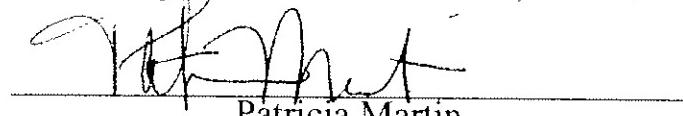
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the

1 ordinary course of business. I am aware that on motion of the party served, service
2 is presumed invalid if postal cancellation date or postage meter date is more than
one day after date of deposit for mailing in affidavit.

3 Executed on January 26, 2009, at Irvine, California.

4 I declare under penalty of perjury that I am employed in the office of a
member of the bar of this court at whose direction the service was made, and that
5 the foregoing is true and correct.

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Patricia Martin

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